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Fifth report on the provisional application of treaties

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Introduction

1. In his fourth report on the provisional application of treaties,[1] submitted in June 2016 for consideration by the International Law Commission, the Special Rapporteur continued his study of the relationship of provisional application to other provisions of the Vienna Convention on the Law of Treaties[2] (hereinafter the 1969 Vienna Convention), namely part II, section 2 (Reservations); part V, section 2 (Invalidity of treaties); article 60 (Termination or suspension of the operation of a treaty as a consequence of its breach); and part VI, article 73 (Cases of State succession, State responsibility and outbreak of hostilities).

2. The fourth report also analysed the practice of international organizations in relation to provisional application of treaties. Specifically, it focused on the practice of the United Nations, taking into account the depositary functions of the Secretary-General and the functions carried out under Article 102 (1) of the Charter of the United Nations and the treaty handbooks published by the Secretariat of the Organization. The aim of that review was to illustrate the fact that, when collated, the information provided by States to the Secretariat of the United Nations shows that there is still some uncertainty within the community of States as to the content and scope of the provisional application of treaties.

3. On the basis of the information gathered, the fourth report alluded briefly to the practice of the Organization of American States, the European Union, the Council of Europe, the North Atlantic Treaty Organization and the Economic Community of West African States. The present report provides more detailed information on the practice of the Council of Europe and also contains a new section and an annex on the practice of the European Free Trade Association (EFTA).

4. The present report also refers briefly to cases regularly dealt with by World Trade Organization (WTO) dispute settlement mechanisms.

5. Also in his fourth report, the Special Rapporteur presented a draft guideline (draft guideline 10) on internal law and the observation of provisional application of all or part of a treaty, in addition to the set of nine draft guidelines then under consideration by the Drafting Committee.

6. The Commission had before it a new memorandum prepared by the Secretariat at the request of the General Assembly and the Commission and issued on 24 March 2017.[3] The memorandum reviews State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, that provide for provisional application, including treaty actions related thereto. The analysis covers a wide range of bilateral and multilateral treaties concluded since 1 January 1996 that have been registered with the Secretariat of the United Nations in accordance with Article 102 (1) of the Charter of the United Nations and have been subject to provisional application. It also includes a review of a number of multilateral treaties that have been deposited with the Secretary-General but have not yet entered into force. This identification, compilation and systematization exercise is of great importance for the purposes of the topic covered in the present report, since it makes it possible to assess, on the basis of a representative sample of bilateral and multilateral treaties covering an extended period of time, existing State practice in regard to provisional application, without claiming to be exhaustive. The Special Rapporteur wishes to express his great appreciation and gratitude to the Secretariat

[1] A/CN.4/699 and A/CN.4/699/Add.1.

[2] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969). United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 331.

[3] A/CN.4/707.

for this very valuable input, which adds considerably to the examples identified in the four previous reports.

7. Meanwhile, the debates in the Sixth Committee continue to contribute to the study of the practice and legal effects of the provisional application of treaties.

8. At the seventy-second session of the General Assembly, 44 delegations, including delegations representing the Community of Latin American and Caribbean States, the European Union and the Council of Europe, made statements on the topic of the provisional application of treaties, representing a significant increase compared to the statements made during the seventy-first session. This trend has been constant in recent years and reflects the growing interest shown by Member States in the topic of the provisional application of treaties, in particular since the Commission, at its sixty-ninth session, provisionally adopted a first set of draft guidelines, together with their respective commentaries.

9. In general, delegations such as those of Algeria,[4] Australia,[5] Austria,[6] Bulgaria,[7] China,[8] El Salvador (on behalf of the Community of Latin American and Caribbean States),[9] El Salvador,[10] Slovakia,[11] Slovenia,[12] Estonia,[13] France,[14] Greece,[15] Hungary,[16] India,[17] Israel,[18] Malaysia,[19] Mexico,[20] New Zealand,[21] the Netherlands,[22] Peru,[23] Poland,[24] Portugal,[25] the United Kingdom of Great Britain and Northern Ireland,[26] Romania,[27] Singapore,[28] Sweden (on behalf of the Nordic countries),[29] the European Union[30] and Viet Nam[31] welcomed the 11 draft guidelines and commentaries thereto provisionally adopted so far by the Commission.

10. El Salvador[32] and Mexico[33] reiterated that the draft guidelines should be fully consistent with the 1969 Vienna Convention and the Vienna Convention on the Law of Treaties between States and International Organizations or between International

[4] A/C.6/72/SR.21, para. 17. [Country names in para. 9 above are listed in Spanish alphabetical order.]
[5] A/C.6/72/SR.18, paras. 89 and 90.
[6] *Ibid.*, paras. 75–78.
[7] A/C.6/72/SR.22, paras. 9 and 10.
[8] A/C.6/72/SR.18, paras. 121 and 122.
[9] *Ibid.*, para. 36.
[10] A/C.6/72/SR.19, paras. 31 and 32.
[11] *Ibid.*, paras. 58 and 59.
[12] *Ibid.*, paras. 22–26.
[13] A/C.6/72/SR.20, para. 72.
[14] A/C.6/72/SR.18, paras. 127–136.
[15] A/C.6/72/SR.19, paras. 51–53.
[16] *Ibid.*, paras. 75 and 76.
[17] *Ibid.*, para. 14.
[18] A/C.6/72/SR.20, paras. 4 and 5.
[19] A/C.6/72/SR.22, paras. 11–16.
[20] A/C.6/72/SR.18, paras. 112–115.
[21] A/C.6/72/SR.20, paras. 50–52.
[22] *Ibid.*, para. 23.
[23] A/C.6/72/SR.19, para. 10.
[24] *Ibid.*, paras. 94 and 95.
[25] A/C.6/72/SR.18, paras. 96–101.
[26] A/C.6/72/SR.19, paras. 5–7.
[27] *Ibid.*, paras. 83–86.
[28] A/C.6/72/SR.18, paras. 153–156.
[29] *Ibid.*, paras. 59–62.
[30] *Ibid.*, paras. 43–53.
[31] A/C.6/72/SR.21, paras. 36 and 37.
[32] A/C.6/72/SR.19, para. 31.
[33] A/C.6/72/SR.18, para. 113.

Organizations[34] (hereinafter the 1986 Vienna Convention). Although Portugal[35] mentioned that the focus of the Commission's work should be on clarifying the existing legal regime of provisional application while remaining within the framework of the 1969 Vienna Convention without widening its scope, Slovenia[36] indicated that some guidelines might require some refinement and possibly some additions that would go beyond a mere restatement of article 25 of the 1969 Vienna Convention.

11. The delegation of Portugal[37] also stressed that the 1969 Vienna Convention merely offered States the possibility of provisional application but did not impose it. In this regard, not only Portugal[38] but also France,[39] Malaysia[40] and Turkey[41] considered it important to underscore the voluntary nature of provisional application. Some delegations, such as those of Spain,[42] the Islamic Republic of Iran[43] and Poland,[44] also suggested that a comprehensive analysis of the relationship between provisional application and all the provisions of the 1969 Vienna Convention should be undertaken in order to gain a better understanding of the topic.

12. Furthermore, the Islamic Republic of Iran,[45] the Russian Federation[46] and Turkey[47] indicated that, given the number of treaties involved, it might be useful for the study to deal with the provisional application of bilateral treaties and the provisional application of multilateral treaties separately.

13. Mexico[48] welcomed the clarification of the differences between provisional application and entry into force, while the Russian Federation[49] mentioned that provisional application should be clearly distinguished from temporary application of treaties.

14. The Special Rapporteur has taken due note of the various comments made by the delegations regarding the draft guidelines and the commentaries thereto. These observations, suggestions and recommendations have been duly taken into account and will serve to guide the discussions within the Commission and the Drafting Committee. He notes, in particular, the emphasis placed on the need to clarify three aspects: the reference to a possible "declaration by a State or an international organization that is accepted by the other States or international organizations" in draft guideline 4; the question of the extent of the binding effect of provisional application, in connection with the wording of draft guideline 6; and the modalities for the termination and suspension of provisional application, in relation to draft guideline 8, bearing in mind the need to maintain a degree of flexibility in this matter.

15. It should be noted in this context that the Special Rapporteur has decided to submit, for consideration by the Commission, two new draft guidelines concerning

[34] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 21 March 1986), A/CONF.129/15.
[35] A/C.6/72/SR.18, para. 97.
[36] A/C.6/72/SR.19, para. 22.
[37] A/C.6/72/SR.18, para. 97.
[38] *Ibid.*
[39] *Ibid.*, para. 129.
[40] A/C.6/72/SR.22, para. 12.
[41] A/C.6/72/SR.20, para. 80.
[42] *Ibid.*, para. 15.
[43] *Ibid.*, para. 45.
[44] A/C.6/72/SR.19, para. 95.
[45] A/C.6/72/SR.20, para. 45.
[46] A/C.6/72/SR.19, para. 47.
[47] A/C.6/72/SR.20.
[48] A/C.6/72/SR.18, para. 114.
[49] A/C.6/72/SR.19, para. 47.

two issues that were discussed in connection with the fourth report, namely: (a) the termination or suspension of the provisional application of a treaty as a consequence of its breach and (b) the formulation of reservations.

16. Lastly, as previously suggested by the Special Rapporteur in his fourth report,[50] and bearing in mind the views of Member States, the present report includes some proposed model clauses, presented for the sole purpose of providing guidance to States and international organizations. These model clauses are intended to be flexible enough so as not to prejudge either the will of the States or international organizations involved or the vast repertoire of possibilities that have been observed in practice with respect to the provisional application of treaties.

1. Continuation of the analysis of views expressed by Member States

17. At its sixty-ninth session, in 2017, the Commission received reports on the national practice of El Salvador and Singapore.

18. El Salvador states that, in accordance with article 144 of its Constitution, and bearing in mind that there is no specific rule concerning provisional application, the latter is governed by the same rules as those that regulate the entry into force of treaties.[51] El Salvador notes that it has concluded and ratified three treaties that contain clauses referring specifically to provisional application. The first is the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other,[52] which was published in the Official Gazette of El Salvador on 11 July 2013.[53] Article 353 (4) of the Agreement provides as follows:

> "Notwithstanding paragraph 2, Part IV of this Agreement may be applied by the European Union and each of the Republics of the CA Party from the first day of the month following the date on which they have notified each other of the completion of the internal legal procedures necessary for this purpose. In this case, the institutional bodies necessary for the functioning of this Agreement shall exercise their functions."

19. The second instrument referred to is the Free Trade Agreement between the Republic of Colombia and the Republics of El Salvador, Guatemala and Honduras,[54] published in the Official Gazette of El Salvador on 12 September 2008.[55] Article 21.6 of the Treaty, entitled "Provisional application", provides as follows:

> "Without prejudice to article 21.3, this Agreement may be applied provisionally by the Republic of Colombia, in accordance with its constitutional requirements, from the date of its signature and until its definitive entry into force. Provisional application shall also cease at the moment when the Republic

[50] A/CN.4/699 [and A/CN.4/699/Add.1], para. 7.

[51] The information received from El Salvador is available at: http://legal.un.org/docs/?path=../ilc/sessions/69/pdfs/english/pat_el_salvador.pdf&lang=E.

[52] Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (Tegucigalpa, 29 June 2012), *Official Journal of the European Union*, L 346, 15 December 2012, p. 3.

[53] El Salvador, *Diario Oficial*, vol. 400, No. 127, available at: http://www.diariooficial.gob.sv/diarios/do-2013/07-julio/11-07-2013.pdf.

[54] Concluded in Medellín, Colombia, on 9 August 2007.

[55] El Salvador, *Diario Oficial*, vol. 380, No. 171, available at: http://www.diariooficial.gob.sv/diarios/do-2008/09-septiembre/12-09-2008.pdf.

> ... if Colombia notifies the other Parties of its intention not to become a Party to this Agreement or its intention to suspend provisional application."

It is worth noting that the phrase "definitive entry into force" is used in this instrument, wording that appears to equate provisional application with "provisional entry into force".

20. Lastly, El Salvador refers to the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of El Salvador, acting through the Ministry of Foreign Affairs,[56] published in the Official Gazette on 5 November 2014.[57] Article 7, section 7.5, refers to provisional application of the Compact:

> "*Provisional Application*. Until this Compact has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact from the date of a letter from the Government informing MCC that the Government is prepared to provisionally apply the Compact; *provided that*, no MCC Funding, other than Compact Implementation Funding, will be made available or disbursed before this Compact enters into force."

21. On 22 December 2017, Singapore submitted its response[58] to the Commission's request for information on this topic.[59] Singapore reports that it has provisionally applied bilateral and multilateral treaties in various sectors, in particular air services (the area accounting for most instances of such practice); economic matters, including trade and investment; and visa abolition agreements. Singapore further notes that it is a party to multilateral treaties that provide for provisional application, such as the United Nations Convention on the Law of the Sea[60] and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.[61] As to the extent of the binding effect of provisional application, Singapore considers that the contracting parties that have agreed to provisional application are bound by the relevant clauses of the treaty *as if they were in force*.[62]

22. Furthermore, during the debate in the Sixth Committee of the General Assembly, various delegations referred in their statements to national practice in relation to the provisional application of treaties.

23. India noted that, since it is a dualistic State, treaties entered into by it do not automatically form part of domestic law; their provisions become applicable only after their acceptance through internal procedures.

24. The European Union referred to the recently adopted Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part.[63] The

[56] Concluded in El Salvador on 30 September 2014.

[57] English version published in United States of America, *Treaties and Other International Acts Series*, No. 15-909.

[58] Available at http://legal.un.org/docs/?path=../ilc/sessions/69/pdfs/english/pat_singapore.pdf&lang=E.

[59] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 10* (A/72/10), paras. 28 and 29.

[60] United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.

[61] Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 28 July 1994), *ibid.*, vol. 1836, No. 31364, p. 3.

[62] Emphasis added.

[63] Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part (Munich, 18 February 2017), *Official Journal of the European Union*, L 67, 14 March 2017, p. 3.

Agreement provides, in article 59 (2), for its provisional application, which commenced on 1 December 2017.[96] That article provides as follows:

> "... the Union and Afghanistan agree to provisionally apply this Agreement in part, as specified by the Union, as set out in paragraph 3, and in accordance with their respective internal procedures and legislation, as applicable."

In this connection, the European Union referred to Council Decision (EU) 2017/434 of 13 February 2017 on the signing and provisional application of the Agreement.[97] The fifth preambular paragraph of the Decision states:

> "The signing of the Agreement on behalf of the Union and the provisional application of parts of the Agreement between the Union and the Islamic Republic of Afghanistan are without prejudice to the allocation of competences between the Union and its Member States in accordance with the Treaties."

Article 3 of the Decision clarifies the scope of the Agreement's provisional application:

> "1. Pending its entry into force, in accordance with Article 59 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and the Islamic Republic of Afghanistan, but only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a common foreign and security policy:
>
> (*a*) Article 2 (General principles);
>
> (*b*) Article 3 (Political dialogue);
>
> (*c*) Article 4 (Human rights);
>
> (*d*) Article 5 (Gender equality);
>
> (*e*) Title III (Development cooperation);
>
> (*f*) Title IV (Cooperation on trade and investment matters);
>
> (*g*) Article 28 (Cooperation on migration);
>
> (*h*) Title VII (Regional cooperation);
>
> (*i*) Title VIII (Institutional framework) to the extent that the provisions of that Title are limited to the purpose of ensuring the provisional application of the Agreement;
>
> (*j*) Title IX (Final provisions) to the extent that the provisions of that Title are limited to the purpose of ensuring the provisional application of the Agreement.
>
> 2. The date from which the parts of the Agreement referred to in paragraph 1 are to be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council."

As a further example of provisional application, the European Union cited the Political Dialogue and Cooperation Agreement between the European Union and its

[96] European Commission, press release of 30 November 2017, "Provisional application of new agreement between the European Union and Afghanistan signals new phase in cooperation", available at http://europa.eu/rapid/press-release_IP-17-5008_en.htm.

[97] *Official Journal of the European Union*, L 67, 14 March 2017, p. 1.

Member States, of the one part, and the Republic of Cuba, of the other part."[56] Article 86 (3) of the Agreement contains provisions on provisional application along the same lines as those used in the Agreement between the European Union and the Islamic Republic of Afghanistan. On 6 December 2016, the Council adopted Decision 2016/2232,[57] whereby it accepts provisional application in the following terms:

> "(5) The provisional application of parts of the Agreement does not prejudge the allocation of competences between the Union and its Member States in accordance with the Treaties. It should also be consistent with the nature of Union competence, in particular as regards matters referred to in Titles IV to VII of Part III of the Agreement."

Article 3 of the Decision clarifies the scope of provisional application:

> "Pending the entry into force of the Agreement, in accordance with Article 86 (3) thereof and subject to the notifications provided for therein, the following parts of the Agreement shall be applied on a provisional basis between the Union and the Republic of Cuba, but only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a common foreign and security policy:
>
> — Parts I to IV; and
>
> — Part V, to the extent that the provisions thereof are limited to the purpose of ensuring provisional application of the Agreement.
>
> Notwithstanding the first paragraph of this Article, the following Articles shall not be applied on a provisional basis:
>
> — Article 29;
>
> — Article 35;
>
> — Article 55 to the extent that it concerns cooperation on maritime transport;
>
> — Article 58;
>
> — Article 71 to the extent that it concerns border security; and
>
> — Article 73 to the extent that it concerns cooperation on non-agricultural geographical indications."

Interestingly, article 3 contains a footnote stating that "the date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council".

25. It can be seen from the foregoing that, in the case of the above Agreement, provisional application was effected in three stages: first, the parties agreed to include a provisional application clause in the treaty; secondly, one of the parties, as an international organization, adopted a decision whereby all its members agreed on the terms under which the Agreement would be applied provisionally; and thirdly, the decision stipulated that the date of commencement of provisional application would be established by means of a notice published in the *Official Journal of the European Union*.

[56] Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part (Brussels, 12 December 2016), *ibid.*, L 337 I, 13 December 2016, p. 3.

[57] *Ibid.*, p. 1.

26. Another example cited by the European Union concerns the Agreement between the European Union and the Kingdom of Norway on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund for the period 2014 to 2020.[68] Article 19 of the Agreement, entitled "Entry into force", states in paragraph 4 thereof:

> "Except for Article 5, the Parties shall apply this Agreement provisionally as from the day following that of its signature, without prejudice to constitutional requirements."

27. The three treaties cited by the European Union, which were concluded in 2016 and 2017, further demonstrate the validity and relevance of provisional application in current treaty law and the usefulness of this concept for this regional organization.

28. The Special Rapporteur would also like to refer to the decision adopted by the European Council[69] regarding the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union.[70] Article 30.7 (3) of the Agreement provides for the possibility of the Agreement's provisional application. This provision allows certain parts of the Agreement that fall under the competence of the European Union to be provisionally applied, pending the fulfilment of all the requirements for its entry into force.

29. Similarly, the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part,[71] provides, in article 30 (2), for provisional application of parts of the Agreement that fall within the competence of the European Union.

30. France cited a prime ministerial circular of 30 May 1997 on the drafting and conclusion of international agreements,[72] which refers, in part VI (entry into force), section 3 (provisional application) thereof, to provisional application in the following terms:

> "Provisional application may be provided for in final provisions for reasons connected with specific circumstances, but it must remain exceptional. It is used primarily for practical reasons and may lead to legal uncertainty if entry into force is delayed. In any event, it is prohibited, first, when the agreement may affect the rights and obligations of individuals and, secondly, when entry into force requires authorization by Parliament."[73]

31. The delegation of Peru indicated that the country has no domestic legislation pertaining directly to the provisional application of treaties. However, the 1969 Vienna Convention forms part of domestic law, in accordance with the Constitution.

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[68] Agreement between the European Union and the Kingdom of Norway on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund for the period 2014 to 2020 (Brussels, 8 December 2016), *ibid.*, L 75, 21 March 2017, p. 3.

[69] Decision (EU) 2017/38 of 28 October 2016 on the provisional application of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, *ibid.*, L 11, 14 January 2017, p. 1080.

[70] Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (Brussels, 30 October 2016), *ibid.*, p. 23.

[71] Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, (Brussels, 30 October 2016), *ibid.*, L 329, 3 December 2016, p. 45.

[72] *Journal officiel de la République française*, No. 0125, 31 May 1997, p. 8415. The text of the circular is available at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000200416.

[73] [Footnote 73 is not applicable to the English version of the present report.]

Furthermore, Peru made a reservation to article 25 of the 1969 Vienna Convention upon ratifying that instrument. The reservation provides as follows:

> "For the Government of Peru, the application of articles 11, 12 and 25 of the Convention must be understood in accordance with, and subject to, the process of treaty signature, approval, ratification, accession and entry into force stipulated by its constitutional provisions."[74]

However, by way of an example of provisional application by Peru, reference was made to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part.[75] Article 330 of the Agreement, entitled "Entry into force", refers, in paragraphs 3 and 4, to provisional application:

> "1. Each Party shall notify in writing the completion of its internal procedures required for the entry into force of this Agreement to all other Parties and to the Depositary referred to in Article 332.
>
> 2. This Agreement shall enter into force between the EU Party and each signatory Andean Country on the first day of the month following the date of receipt by the Depositary of the last notification foreseen in paragraph 1 corresponding to the EU Party and that signatory Andean Country, unless the Parties concerned have agreed on a different date.
>
> 3. Notwithstanding paragraph 2, the Parties may provisionally apply this Agreement fully or partially. Each Party shall notify the Depositary and all other Parties of the completion of the internal procedures required for the provisional application of this Agreement. The provisional application of this Agreement between the EU Party and a signatory Andean Country shall begin on the first day of the month following the date of receipt by the Depositary of the last notification of the EU Party and such signatory Andean Country.
>
> 4. Where in accordance with paragraph 3, a provision of this Agreement is applied by the Parties pending the entry into force of this Agreement, any reference in such provision to the date of entry into force of this Agreement shall be understood to refer to the date from which the Parties agree to apply that provision in accordance with paragraph 3."

32. It is interesting to note the indication in paragraph 4 above that any reference to entry into force in a provision of the Agreement that is being applied provisionally is understood to refer to the date on which provisional application of the provision commenced. Also noteworthy is the fact that, at the time of writing, the Agreement is still being applied provisionally.

33. Regarding termination of provisional application upon the entry into force of the treaty concerned, Peru referred to the following examples: the agreement between Peru and the Netherlands concerning the establishment of instruction workshops in Peru;[76] the 1979 Protocol for the fifth extension of the Wheat Trade Convention,

[74] C.N.1021.2000.TREATIES-2 (Depositary Notification), available on the website of the United Nations Treaty Collection: https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Related%20Documents/CN.1021.2000-Eng.pdf.

[75] Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (Brussels, 26 June 2012), *Official Journal of the European Union*, L 354, 21 December 2012, p. 3.

[76] *Acuerdo para el Establecimiento de Talleres de Capacitación en el Perú* (Lima, 9 December 1965), available on the website of the Ministry of Foreign Affairs of Peru, Directorate-General for Treaties: https://apps.rree.gob.pe/portal/webtratados.nsf/Tratados_Bilateral.xsp?action=openDocument&documentId=702E.

1971;[77] the agreement by exchange of notes between Peru and Argentina of 17 June 1979;[78] and the International Sugar Agreement, 1984.[79]

34. Article VII (3) of the agreement between Peru and the Netherlands concerning the establishment of instruction workshops in Peru refers to provisional application as follows:

> "Notwithstanding paragraph 1 of this article, the present Agreement shall start to apply provisionally in respect of administrative matters as from the date of signature."

35. Article 8 of the 1979 Protocol for the fifth extension of the Wheat Trade Convention refers to provisional application as follows:

> "Provisional application. Any signatory Government may deposit with the Government of the United States of America a declaration of provisional application of this Protocol. Any other Government eligible to sign this Protocol or whose application for accession is approved by the Council may also deposit with the Government of the United States of America a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto."

Under this provision, a State provisionally applying the treaty is regarded, *albeit provisionally, as a State party*.

36. The way in which provisional application operates under the International Sugar Agreement, 1984, is also interesting, in view of its implications. The relevant provisions are the following:

> "Article 37. Notification of provisional application
>
> 1. A signatory Government which intends to ratify, accept or approve this Agreement, or a Government for which the Council has established conditions for accession but which has not yet been able to deposit its instrument, may, at any time, notify the depositary that it will apply this Agreement provisionally either when it enters into force in accordance with article 38 or, if it is already in force, at a specified date.
>
> 2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or, if it is already in force, at a specified date shall, from that time, be a provisional Member until it deposits its instrument of ratification, acceptance, approval or accession and thus becomes a Member.
>
> Article 38. Entry into force
>
> 1. This Agreement shall enter into force definitively on 1 January 1985, or on any date thereafter, if by that date instruments of ratification, acceptance, approval or accession have been deposited on behalf of Governments holding 50 per cent of the votes of the exporting countries and 50 per cent of the votes

[77] *Official Journal of the European Communities*, L 152, 20 June 1979, p. 10.

[78] Exchange of notes of 17 June 1979 constituting an agreement for the provisional application of the Convention on International Land Transport and the annexes thereto, signed in Mar del Plata on 10 November 1977, available on the website of the Ministry of Foreign Affairs of Peru, Directorate-General for Treaties: https://apps.rree.gob.pe/portal/webtratados.nsf/Tratados_Bilateral.xsp?action=openDocument&documentId=E0E2.

[79] International Sugar Agreement, 1984 (Geneva, 5 July 1984), United Nations, *Treaty Series*, vol. 1388, No. 23225, p. 3.

of the importing countries in accordance with the distribution established in annex A and annex B to this Agreement, respectively.

2. If, on 1 January 1985, this Agreement has not entered into force in accordance with paragraph 1 of this article, it shall enter into force provisionally if by that date instruments of ratification, acceptance or approval or notifications of provisional application have been deposited on behalf of Governments satisfying the percentage requirements of paragraph 1 of this article.

3. If, on 1 January 1985, the required percentages for entry into force of this Agreement in accordance with paragraph 1 or paragraph 2 of this article are not met, the Secretary-General of the United Nations shall invite the Governments on whose behalf instruments of ratification, acceptance or approval or notifications of provisional application have been deposited to decide whether this Agreement shall enter into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine. If this Agreement has entered into force provisionally in accordance with this paragraph, it shall subsequently enter into force definitively upon fulfilment of the conditions set out in paragraph 1 of this article without the necessity of a further decision.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraphs 1, 2 or 3 of this article, the instrument or notification shall take effect on the date of deposit and, with regard to notification of provisional application, in accordance with the provisions of article 37, paragraph 1."

37. Several elements are worthy of note. First, the treaty gives States the option of providing notification of their intention to apply the treaty provisionally. Further, under article 37, paragraph 2, a State that deposits a notification of provisional application is recognized as a "provisional member" of the treaty once the latter has entered into force. Secondly, article 38, paragraph 2, refers to the possibility that the treaty may "enter into force provisionally"; this is a terminological imprecision that has already been discussed in previous reports.[80] Thirdly, and perhaps most significantly, article 38, paragraph 3, provides that if the minimum number of ratifications required for the treaty's entry into force has not been received by 1 January 1985, the Secretary-General of the United Nations shall invite those States that have deposited instruments of ratification, acceptance or approval, as well as those States that have deposited notifications of provisional application, to decide whether the treaty should enter into force *definitively or provisionally* among themselves, in whole or in part.

38. On 17 June 1979, Peru and Argentina concluded an agreement by exchange of notes for the express purpose of arranging for the provisional application of the Convention on International Land Transport and the annexes thereto, signed on 10 November 1977. First, the Argentine Government wrote to the Minister for Foreign Affairs of Peru as follows:

"I have the honour to refer to the Convention on International Land Transport and the annexes thereto, signed on 10 November 1977 at the eighth Meeting of Ministers of Public Works and Transport of the Southern Cone countries, held in Mar del Plata, the texts of which are attached hereto.

[80] See the first report of the Special Rapporteur (A/CN.4/664), paras. 7–24.

> In this connection, I have the pleasure to inform you that the Government of Argentina is in agreement with these instruments, in view of the provisions of the Act signed on the occasion of the Extraordinary Meeting of the Special Committee on Coordination between our two countries, held in Buenos Aires from 11 to 14 June, a copy of which is attached hereto.
>
> I therefore propose that this note and your favourable reply shall constitute an Agreement between our two Governments for the provisional application of the above-mentioned instruments as from the date of your reply. These instruments shall enter into force definitively on the date on which the Parties notify each other that the instruments have been approved in accordance with the Parties' respective legal provisions."[81]

39. The reply from Peru to the Minister for Foreign Affairs and Worship of Argentina reproduces the content of the note received from the latter, then states the following:

> "In this connection, I have the pleasure to inform you that the Government of Peru is in agreement with the terms of the note reproduced above, which, together with this reply, shall constitute an Agreement between our Governments for the provisional application of the above-mentioned instruments, bearing in mind the relevant legislation in force in each country."[82]

This agreement is an example of provisional application agreed upon by means of an accord that is separate from the main convention and consists of an exchange of diplomatic notes.

40. The delegation of Hungary indicated that the concept of provisional application exists in the country's domestic law and that it involves the same general procedures as those followed for the conclusion of treaties. This means that provisional application is not a fast-track approach to treaty conclusion under Hungarian law, as the same rules have to be followed as for the standard entry into force of a treaty. The delegation also noted that provisional application of bilateral agreements is practically non-existent in Hungary.

41. The delegation of Israel stated that the Government's practice generally does not permit the provisional application of treaties. There are nonetheless some exceptional circumstances in which provisional application may be allowed, such as when the internal requirements for the approval of a treaty are lengthy or when there is an urgent need to apply a treaty because of political or economic considerations. Even in such cases, however, provisional application is subject to a number of procedural conditions, including the completion of the necessary internal procedures for the entry into force of the treaty and the adoption of a specific decision by the Government of Israel approving the provisional application of the treaty in question. In particular, Israel has identified an occasional need to apply air services agreements between Israel and other countries even prior to their signature. It has developed a unique procedure for that purpose, which allows for the mutual administrative implementation of such agreements. Under that procedure, both parties must first initial the air services agreement in question. Subsequently, the Government of Israel must permit Israel to establish and operate air services between the relevant countries, in accordance with the provisions of the initialled draft agreement. Following the Government's approval, the provisional application of the agreement commences on the date on which the two countries notify each other of the completion of their respective internal procedures necessary for such application. However, Israel takes the view that this kind of early application is not considered provisional application

[81] See footnote 78 above.
[82] *Ibid.*

per se, as provided in article 25 of the 1969 Vienna Convention, or at the very least it is not considered by the Government of Israel to be a classic example of provisional application.

42. The delegation of Estonia referred to section 23 of the Foreign Relations Act,[83] which concerns guarantees of the performance of treaties. The Act establishes, in paragraph 2, that:

> "The Government of the Republic may temporarily apply a treaty after approval thereof and prior to the entry into force thereof on the condition that the fundamental rights and freedoms of persons are not restricted thereby and the treaty or a legal act of the Government of the Republic prescribes temporary application of the treaty."[84]

In its statement, the delegation of Estonia clarified that the term "temporary application" is equivalent to "provisional application".

43. The delegation of Turkey stated that the country is not in a position to apply treaties provisionally owing to its constitutional provisions on treaties. The Special Rapporteur nonetheless notes that article 90 under section D, "Ratification of international treaties", of the Constitution of Turkey[85] does not expressly prohibit provisional application, although the possibility that other provisions of Turkish law may do so cannot be ruled out.

44. The delegation of Malaysia indicated that the country's domestic law does not contain any express provision either prohibiting or permitting the provisional application of treaties. In this regard, Malaysia has a practice of enacting appropriate domestic laws before ratifying any particular treaty.

Chapter II
Additional information on the practice of international organizations

45. The Special Rapporteur gratefully acknowledges the support provided by the Société française pour le droit international, which supplied information on the practice of the following international organizations:

(*a*) International Organization of la Francophonie;

(*b*) International Labour Organization (ILO); and

(*c*) European Free Trade Association (EFTA).

46. With respect to the International Organization of la Francophonie, some 20 agreements on cooperation between that organization and some of its member States or between it and other international organizations were identified. These are agreements in simplified form, as they provide for entry into force at the time of signature, with the result that the question of provisional application does not arise. These agreements are thus not relevant for the purposes of the present report.

[83] Foreign Relations Act, adopted on 15 June 2006, RT I 2006, 32, 248, entered into force on 1 January 2007, available at: https://www.riigiteataja.ee/en/eli/517012014001/consolide.

[84] [Footnote 84 is not applicable to the English version of the present report.]

[85] Constitution of the Republic of Turkey, available at: https://global.tbmm.gov.tr/docs/constitution_en.pdf.

47. Among the conventions concluded under the auspices of ILO, only the Seafarers' Identity Documents Convention (No. 185)[56] provides for provisional application, in article 9.

48. EFTA, however, has a wealth of practice on the subject, and in general the relevant provisions of the treaties concluded under its auspices are similarly worded. The annex to the present report contains a table reproducing the relevant articles and the titles of the treaties containing them.

49. The Council of Europe provided the following examples of provisional application, in addition to those contained in the memorandum by the Secretariat on the provisional application of treaties.[57]

50. The first is the General Agreement on Privileges and Immunities of the Council of Europe,[58] of which article 22, second paragraph, provides for the provisional application of the Agreement by the signatory States pending its entry into force:

> "Article 22. Final provisions
>
> [...] pending the entry into force of the Agreement in accordance with the provisions of the preceding paragraph, the signatories agree, in order to avoid any delay in the efficient working of the Council, to apply it provisionally from the date of signature, so far as it is possible to do so under their respective constitutional systems."

51. Reference was also made to the Convention on the Elaboration of a European Pharmacopoeia,[59] which contains the following clause on provisional application:

> "Article 17. Provisional application
>
> Pending the entry into force of the present Convention in accordance with the provisions of Article 11, the signatory States agree, in order to avoid any delay in the implementation of the present Convention, to apply it provisionally from the date of signature, in conformity with their respective constitutional systems."

52. Another example is the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism,[60] which entered into force on 1 July 2017. The Protocol does not contain a provisional application clause. However, article 7 provides for the establishment of a network of national points of contact available on a 24-hour basis in order to strengthen the timely exchange of information concerning persons travelling abroad for the purpose of terrorism. In order to apply this article provisionally and set up the network as soon as possible, the Committee of Ministers of the Council of Europe adopted decision CM/PV(2016)126/2b-add1 at its 126th session, held in Sofia on 18 May 2016. In that decision, the Committee "called for the expeditious designation of the 24/7 contact points to facilitate the timely exchange

[56] ILO Convention (No. 185) revising the Seafarers' Identity Documents Convention, 1958 (Geneva, 19 June 2003), United Nations, *Treaty Series*, vol. 2304, No. 41069, p. 121. See also www.ilo.org/dyn/normlex/en/.

[57] A/CN.4/707.

[58] General Agreement on Privileges and Immunities of the Council of Europe (Paris, 2 September 1949), Council of Europe, *European Treaty Series*, No. 2, available at https://rm.coe.int/1680063729.

[59] Convention on the Elaboration of a European Pharmacopoeia (Strasbourg, 22 July 1964), Council of Europe, *European Treaty Series*, No. 50, available at https://rm.coe.int/168006ff4c.

[60] Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (Riga, 22 October 2015), *Council of Europe Treaty Series*, No. 217, available at https://rm.coe.int/168047c5ea.

of information, as provided for by the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism [...], *pending its entry into force*".[91]

53. In this instance, it was the decision by the Committee of Ministers that led to the provisional application of article 7 of the Protocol.

54. Lastly, as the most recent example, the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons[92] was cited. The Protocol contains the following clause on provisional application:

> "Article 5. Provisional application
>
> Pending the entry into force of this Protocol according to the conditions set under Article 4, a Party to the Additional Protocol may at the time of ratification, acceptance or approval of this Protocol or at any later moment, declare that it will apply the provisions of this Protocol on a provisional basis. In such cases, the provisions of this Protocol shall apply only with respect to the other Parties which have made a declaration to the same effect. Such a declaration shall take effect on the first day of the second month following the date of its receipt by the Secretary General of the Council of Europe."[93]

55. As at the time of submission of the present report, six States had signed the Protocol but none had made a declaration of provisional application.[94]

56. With respect to WTO, it is well known that the General Agreement on Tariffs and Trade (GATT)[95] is undoubtedly the multilateral treaty that was applied provisionally for the longest period of time (from 1947 to 1994), as noted in the third report.[96] The Special Rapporteur has identified a number of decisions taken by WTO dispute settlement mechanisms that concern the provisional application of the General Agreement; these are noted as examples of case law that were not included in the previous reports.[97]

Chapter III
New draft guidelines

57. In his third report, the Special Rapporteur proposed six draft guidelines on the provisional application of treaties.[98] The draft guidelines were referred to the Drafting

[91] Democratic security for all in Europe in challenging times. b. Tackling violent extremism and radicalisation leading to terrorism (CM/PV(2016)126-final), appendix 3, para. 3, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806c9744. Emphasis added.

[92] Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 22 November 2017), *Council of Europe Treaty Series*, No. 222, available at https://rm.coe.int/1680730c1f.

[93] [Footnote 93 is not applicable to the English version of the present report.]

[94] See https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/222.

[95] General Agreement on Tariffs and Trade (Geneva, 30 October 1947), United Nations, *Treaty Series*, vol. 55, No. 814, p. 187.

[96] A/CN.4/687, para. 99.

[97] See GATT, Report of the Panel, *United States – Measures affecting alcoholic and malt beverages*, DS23/R-39S/206, adopted on 19 June 1992; GATT, Report by the Panel, *Canada – Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies*, DS17/R-39S/27, adopted on 18 February 1992; GATT, Report of the Panel, *Thailand – Restrictions on importation of and internal taxes on cigarettes*, DS10/R-37S/200, adopted on 7 November 1990; GATT, Report of the Panel, *Norway – Restrictions on imports of apples and pears*, L/6474-36S/306, adopted on 22 June 1989.

[98] A/CN.4/687, para. 131.

Committee, which provisionally adopted three of them at its meetings of 29 and 30 July 2015: draft guidelines 1 (Scope), 2 (Purpose) and 3 (General rule).[97]

58. The Drafting Committee also considered six more draft guidelines (namely draft guidelines 4 to 9), which were revised versions of the texts originally included in the third report and were submitted by the Special Rapporteur on 28 July 2015.[98]

59. Subsequently, in his fourth report, the Special Rapporteur proposed one additional draft guideline, namely draft guideline 10 (Internal law and the observation of provisional application of all or part of a treaty), for possible referral to the Drafting Committee.[99]

60. As indicated in the report of the Drafting Committee, that Committee provisionally adopted draft guidelines 4, 6, 7, 8 and 9, while suspending its consideration of draft guideline 5, which would be revised by the Special Rapporteur.[100]

61. Subsequently, during the first part of the 2017 session, the Drafting Committee provisionally adopted draft guidelines 10, 11 and 12 but did not have time to consider draft guideline 5.[101] It did, however, consider and provisionally adopt that draft guideline at its meeting of 24 July 2017.[102] The end result was an initial set of 11 draft guidelines with commentaries,[103] which were adopted by the Commission.[104]

62. In addition to those 11 draft guidelines, the Special Rapporteur is proposing two more draft guidelines in the present report, taking into account the observations and comments received with regard to two issues: (*a*) the termination or suspension of the provisional application of a treaty as a consequence of its breach, and (*b*) the formulation of reservations.

A. Termination or suspension of the provisional application of a treaty as a consequence of its breach

63. The relationship between the provisional application of a treaty and its termination or suspension as a consequence of its breach has already been analysed

[97] On 4 August 2015, the Chairman of the Drafting Committee, Mr. Mathias Forteau, presented the Committee's provisional oral report on draft guidelines 1 to 3, which were provisionally adopted by the Drafting Committee at the sixty-seventh session. The report is available on the Commission's website: http://legal.un.org/docs/?path=../ilc/documentation/english/statements/2015_dc_chairman_statement_pat.pdf&lang=EF.

[98] See the fourth report of the Special Rapporteur (A/CN.4/699 [and A/CN.4/699/Add.1]), para. 178.

[99] *Ibid.*, para. 179.

[100] See the statement made by the Chairman of the Drafting Committee on the provisional application of treaties, Mr. Pavel Šturma, on 9 August 2016, available on the Commission's website: http://legal.un.org/docs/?path=../ilc/documentation/english/statements/2016_dc_chairman_statement_pat.pdf&lang=E.

[101] See the statement made by the Chairman of the Drafting Committee on the provisional application of treaties, Mr. Aniruddha Rajput, on 12 May 2017, available on the Commission's website: http://legal.un.org/docs/?path=../ilc/documentation/english/statements/2017_dc_chairman_statement_pat.pdf&lang=E.

[102] See the statement made by the Chairman of the Drafting Committee on the provisional application of treaties, Mr. Aniruddha Rajput, on 26 July 2017, available on the Commission's website: http://legal.un.org/docs/?path=../ilc/documentation/english/statements/2017_dc_chairman_statement_pat_26july.pdf&lang=E.

[103] A/CN.4/L.895/Rev.1.

[104] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 10* (A/72/10), paras. 55 and 56.

in the Special Rapporteur's fourth report.[107] The conclusion of that analysis was that, given that the provisional application of a treaty produces legal effects as if the treaty were actually in force, and that obligations arise therefrom which must be performed under the *pacta sunt servanda* principle, the prerequisite of the existence of an obligation under international law is met in the case of provisionally applied treaties, and this implies that the provisional application of a treaty may be suspended or terminated in accordance with article 60 of the 1969 Vienna Convention.[108]

64. During the debates in the Sixth Committee, the delegations of Austria, Brazil, China, Cuba, Czechia, El Salvador, the Islamic Republic of Iran, Mexico, Poland, Romania, the Russian Federation, Slovakia, Spain and the European Union expressed interest in the issue of termination and suspension of provisional application. Some of these delegations suggested that it would be useful to explore this issue further and even to develop a new draft guideline to cover such cases.

65. The memorandum by the Secretariat on the provisional application of treaties[109] includes a discussion of the means whereby the provisional application of a treaty may be terminated, but does not refer to anything related to the requirements of article 60 of the 1969 Vienna Convention. This confirms the apparent lack of practice in this regard, and the Special Rapporteur has also been unable to identify any such practice.

66. In any event, *ad cautelam*, the Special Rapporteur has decided to submit the following draft guideline for the Commission's consideration and to seek the latter's views as to the relevance of such a guideline:

Draft guideline 8 bis

Termination or suspension of the provisional application of a treaty or a part of a treaty as a consequence of its breach

A material breach of a treaty or a part of a treaty that is being applied provisionally entitles the States or international organizations concerned to invoke the breach as a ground for terminating such provisional application or suspending the treaty's operation in whole or in part, in accordance with the provisions of article 60 of the 1969 and 1986 Vienna Conventions, respectively.

B. Formulation of reservations

67. The Special Rapporteur has already presented, in his fourth report, an analysis of the relationship between the provisional application of treaties and the reservations regime provided for in the 1969 Vienna Convention.[110] As indicated in that analysis, the Special Rapporteur has not yet encountered a treaty that provides for the formulation of reservations as from the time of provisional application, nor has he encountered provisional application provisions that refer to the possibility of formulating reservations.[111] Furthermore, the memorandum by the Secretariat[112] likewise does not identify any cases where a treaty has provided for the formulation of reservations in relation to its provisional application, or cases where a State has formulated reservations to a treaty that is being applied provisionally.

[107] A/CN.4/699 [and Add.1], paras. 69–87.
[108] *Ibid.*, para. 87.
[109] A/CN.4/707, para. 104.
[110] A/CN.4/699 [and Add.1], paras. 22–39.
[111] *Ibid.*, para. 34.
[112] A/CN.4/707.

68. The conclusion set out in the fourth report nevertheless remains valid: in principle, nothing would prevent a State from formulating reservations as from the time of its agreement to apply a treaty provisionally. This view is based on the fact that the provisional application of treaties produces legal effects and that the purpose of reservations is precisely to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.[113]

69. Accordingly, and in light of the debates in the Commission and the views expressed by certain delegations, such as those of Spain[114] and the Islamic Republic of Iran,[115] in the Sixth Committee, the Special Rapporteur considers that it would be useful to add a draft guideline on this issue, out of the same abundance of caution observed in relation to the preceding draft guideline.

Draft guideline 5 bis

Formulation of reservations

The present draft guidelines are without prejudice to the right of a State or an international organization to formulate reservations with regard to the provisional application of a treaty or a part of a treaty in accordance with the 1969 and 1986 Vienna Conventions, respectively.

C. Amendments

70. The Special Rapporteur wishes to draw the Commission's attention to the issue of provisional application of treaty amendments.

71. The memorandum by the Secretariat[116] refers to this possibility and offers several examples drawn from the practice of international organizations. What these examples have in common is the fact that the decision on the provisional application of amendments adopted pursuant to the treaty has been taken by the competent organs established under the treaty, even when the treaty itself is silent on the subject.

72. At the current stage, the Special Rapporteur sees no need to propose a draft guideline on this issue, both because there has as yet been little practice in this regard and because the issue is to some extent covered by draft guideline 4 (b), although that provision does not expressly refer to amendments as such.

Chapter IV
Proposed model clauses

73. As mentioned in the concluding chapter of his fourth report, the Special Rapporteur wishes to propose some model clauses, as this idea has been widely supported by States. For this purpose, the Special Rapporteur has drawn upon all the practice identified in the previous four reports and, especially, in the annex to the third report,[117] as well as the examples cited in the memorandum by the Secretariat.[118]

74. The information supplied by Governments and the statements made in the Sixth Committee on State practice with regard to provisional application have been invaluable for the purposes of this exercise.

[113] A/CN.4/699 [and Add.1], paras. 36 and 37.
[114] See A/C.6/72/SR.20.
[115] *Ibid.*
[116] A/CN.4/707, paras. 19–21.
[117] A/CN.4/687.
[118] A/CN.4/707.

75. The Special Rapporteur would like to propose eight draft model clauses covering different aspects of provisional application. It should be clarified that these model clauses are intended only to draw attention to some of the most common legal issues that arise in the event of an agreement to apply a treaty provisionally.

76. The draft model clauses thus contain elements that reflect the most clearly established practice of States and international organizations, while avoiding other elements that are not reflected in practice or are unclear or legally imprecise.

77. While none of the proposed wording of this set of model clauses is taken verbatim from any existing treaty, the draft model clauses include footnotes giving examples of provisional application clauses found in treaties that refer to the same issue covered in the draft model clause in question, although these examples are by no means exhaustive.

A. Time frame for the provisional application of a treaty

1. Commencement

Draft model clause 1

The negotiating [contracting] States [international organizations] agree to apply this Treaty provisionally from the date of signature (or any subsequent date agreed upon).[119]

Draft model clause 2

The negotiating [contracting] States [international organizations] agree to apply this Treaty provisionally from … [a specified date].[120]

Draft model clause 3

The negotiating [contracting] States [international organizations] agree that the Treaty [articles … of the Treaty] shall be applied provisionally, except by any State

[119] See Treaty between the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Kyrgyz Republic on the deepening of integration in economic and humanitarian fields (Moscow, 29 March 1996), United Nations, *Treaty Series*, vol. 2014, No. 34547, p. 15, art. 26; Statutes of the Community of Portuguese-Speaking Countries (Lisbon, 17 July 1996), *ibid.*, vol. 2233, No. 39756, p. 207; Agreement concerning permission for the transit of Yugoslav nationals who are obliged to leave the country (Berlin, 21 March 2000), *ibid.*, vol. 2307, No. 41137, p. 3; Agreement establishing the "Karanta" Foundation for support of non-formal education policies and including in annex the Statutes of the Foundation (Dakar, 15 December 2000), *ibid.*, vol. 2341, No. 41941, p. 3; International Cocoa Agreement, 1972 (Geneva, 21 October 1972), *ibid.*, vol. 882, No. 12652, p. 67, art. 66.

[120] See International Coffee Agreement, 1994 (London, 30 March 1994), United Nations, *Treaty Series*, vol. 1827, No. 31252, p. 3, art. 40, para. 2; International Tropical Timber Agreement, 1994 (Geneva, 26 January 1994), *ibid.*, vol. 1955, No. 33484, p. 81, art. 41, para. 2; Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (Brussels, 21 March 2014), *Official Journal of the European Union*, L 161, 29 May 2014, p. 3; International Coffee Agreement, 1968 (open for signature at New York from 18 to 31 March 1968), United Nations, *Treaty Series*, vol. 647, No. 9262, p. 3, art. 62, para. 2; International Coffee Agreement, 1976 (London, 3 December 1975), *ibid.*, vol. 1024, No. 15034, p. 3, art. 61, para. 2; International Coffee Agreement, 1983 (London, 16 September 1982), *ibid.*, vol. 1333, No. 22376, p. 119, art. 61, para. 2.

[international organization] that notifies the Depositary in writing at the time of signature that it does not consent to such provisional application.[121]

Draft model clause 4

This Treaty shall be applied provisionally from the date on which a State [an international organization] so notifies the other States [international organizations] concerned or deposits a declaration to that effect with the Depositary.[122]

2. Termination

Draft model clause 5

The provisional application of this Treaty shall terminate upon its entry into force for a State [an international organization] that is applying it provisionally.[123]

Draft model clause 6

The provisional application of this Treaty with respect to a State [an international organization] shall be terminated if that State [international organization] notifies the

[121] See Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (footnote 61 above); exchange of notes of 17 June 1979 constituting an agreement for the provisional application of the Convention on International Land Transport and the annexes thereto (footnote 78 above); Protocol on the Provisional Application of the Agreement establishing the Caribbean Community Climate Change Centre (Belize City, 5 February 2002), United Nations, *Treaty Series*, vol. [not yet published], No. 51181 (text available at https://treaties.un.org); Protocol on the Provisional Application of the Revised Treaty of Chaguaramas (Nassau, 5 July 2001), *ibid.*, vol. 2259, No. 40269, p. 440; Agreement on the provisional application of certain provisions of Protocol No. 14 [to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention] pending its entry into force (Agreement of Madrid) (Madrid, 12 May 2009), *Council of Europe Treaty Series*, No. 194, available at https://rm.coe.int/1680083718.

[122] See Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 4 August 1995), United Nations, *Treaty Series*, vol. 2167, No. 37924, p. 3, art. 41, para. 1; Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (Strasbourg, 13 May 2004), *ibid.*, vol. 2677, No. 2889, p. 3; Arms Trade Treaty (New York, 28 March 2013), A/CONF.217/2013/L.3, art. 23; International Cocoa Agreement, 1975 (Geneva, 20 October 1975), United Nations, *Treaty Series*, vol. 1023, No. 15033, p. 253, art. 68; International Agreement on Olive Oil and Table Olives, 1986 (Geneva, 1 July 1986), *ibid.*, vol. 1445, No. 24591, p. 13, art. 54; International Grains Agreement, 1995 (including the Grains Trade Convention, 1995, and the Food Aid Convention, 1995) (London, 7 and 5 December 1994), *ibid.*, vol. 1882, No. 32022, p. 195, art. 26; International Wheat Agreement, 1986 (London, 14 March 1986), *ibid.*, vol. 1429, No. 24237, p. 71, art. 26; Food Aid Convention, 1986 (London, 13 March 1986), *ibid.*, art. XIX; Food Aid Convention, 1995 (London, 5 December 1994), *ibid.*, vol. 1882, No. 32022, p. 195, art. XIX; Sixth International Tin Agreement (Geneva, 26 June 1981), *ibid.*, vol. 1282, No. 21139, p. 205, art. 53; International Natural Rubber Agreement, 1979 (Geneva, 6 October 1979), *ibid.*, vol. 1201, No. 19184, p. 191, art. 60; International Tropical Timber Agreement, 1983 (Geneva, 18 November 1983), *ibid.*, vol. 1393, No. 23317, p. 67, art. 36; International Agreement on Jute and Jute Products, 1982 (Geneva, 1 October 1982), *ibid.*, vol. 1346, No. 22672, p. 59, art. 39.

[123] See Agreement of Madrid (footnote 121 above); Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (footnote 61 above) and the annex to the agreement, on costs to States parties and institutional arrangements.

other States [international organizations] (or the Depositary) of its intention not to become a party to the Treaty.[124]

B. Scope of provisional application

1. Treaty as a whole

Draft model clause 7

A State [An international organization] that has notified the other States [international organizations] (or the Depositary) that it will provisionally apply this Treaty shall be bound to observe all the provisions thereof as agreed with the States [international organizations] concerned.[125]

2. Only a part of a treaty

Draft model clause 8

A State [An international organization] that has notified the other States [international organizations] (or the Depositary) that it will provisionally apply articles [...] of this Treaty shall be bound to observe the provisions thereof as agreed with the States [international organizations] concerned.[126]

Chapter V
Conclusion

78. The Special Rapporteur wishes to raise the following points at the conclusion of this fifth report.

[124] See 1969 Vienna Convention (footnote 2 above), Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the implementation of air traffic controls by the Federal Republic of Germany above Dutch territory and concerning the impact of the civil operations of Niederrhein Airport on the territory of the Kingdom of the Netherlands (Berlin, 29 April 2003), United Nations, *Treaty Series*, vol. 2389, No. 43165, p. 117; Agreement between Spain and the International Oil Pollution Compensation Fund (London, 2 June 2000), *ibid.*, vol. 2161, No. 37756, p. 45; Agreement between the Government of the United States of America and the Government of the Republic of the Marshall Islands concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials by sea (Honolulu, 13 August 2004), *ibid.*, vol. [not yet published], No. 51490 (text available at https://treaties.un.org); Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (footnote 122 above); Energy Charter Treaty (Lisbon, 17 December 1994), United Nations, *Treaty Series*, vol. 2080, No. 36116, p. 95.

[125] See International Agreement on Olive Oil and Table Olives, 2005 (Geneva, 29 April 2005), United Nations, *Treaty Series*, vol. 2684, No. 47662, p. 63; Agreement between the European Community and the Republic of Paraguay on certain aspects of air services (Brussels, 22 February 2007), *Official Journal of the European Union*, No. L 122, 11 May 2007, p. 31; Agreement establishing the Union of Banana Exporting Countries (Panama City, 17 September 1974), United Nations, *Treaty Series*, vol. 1292, No. 21294, p. 273, art. 38.

[126] See Arms Trade Treaty (footnote 122 above), art. 23; Convention on Cluster Munitions (Dublin, 30 May 2008), United Nations, *Treaty Series*, vol. 2688, No. 47713, p. 39, art. 18; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Oslo, 18 September 1997), *ibid.*, vol. 2056, No. 35597, p. 211, art. 18; Energy Charter Treaty (footnote 124 above), art. 45; Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (footnote 120 above), art. 486, para. 3.

79. While the factors that may prompt States and international organizations to resort to the provisional application of a treaty or a part of a treaty include urgency, the desire for flexibility, precaution and, of course, transition to imminent entry into force (as this is the natural tendency of any treaty, just as universality is the natural tendency of multilateral treaties), this option under the law of treaties is sometimes preferred for reasons relating more to the legal effects that it produces in the domestic sphere than to the effects that it produces internationally. The practice of the European Union seems to be particularly relevant in this regard.

80. The object and purpose of a treaty are undoubtedly among the key factors that determine how useful the treaty's provisional application will be for the attainment of those ends. Thus, most but not all State practice in this regard concerns treaties on matters such as trade and raw materials, as seen in the examples cited above.

81. Generally speaking, it appears that the complexity of international relations and the striking degree of specialization in contemporary international law have created a need to better equip the multiple stakeholders in the international arena to take decisions that facilitate the operation and full deployment of the legal effects of the agreements they conclude and, where appropriate, the optimal incorporation of such agreements into the domestic law of States or the rules of international organizations.

82. Thus, ever since the Commission first conferred this mandate on the Special Rapporteur, he has seen this endeavour as leading to the preparation of a guide to practice, which, without detracting from the flexibility inherent in the mechanism of provisional application by overdeveloping the regime set out in article 25 of the 1969 and 1986 Vienna Conventions, will serve as a practical tool for the growing number of users of international law.

83. It is the Special Rapporteur's hope that the Commission will complete its first reading of the draft guidelines and draft model clauses at its seventieth session, as these texts as a whole will comprise the aforementioned guide to practice.

Annex

Provisional application of treaties negotiated within the European Free Trade Association (EFTA)

Free Trade Agreement between the EFTA States and Israel *Signed 17 September 1992*	Article 33 (Entry into force) 1. This Agreement shall enter into force on 1 January 1993 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Israel is among the States that have deposited their instruments of ratification or acceptance. 2. In relation to a Signatory State depositing its instrument of ratification or acceptance after 1 January 1993, this Agreement shall enter into force on the first day of the second month following the deposit of its instrument, provided that Israel is among the States that have deposited their instruments of ratification or acceptance. **3. Any Signatory State may already at the time of signature declare that, during an initial phase, it shall apply the Agreement provisionally, if the Agreement cannot enter into force in relation to that State by 1 January 1993, provided that in relation to Israel the Agreement has entered into force.**
Interim Agreement between the EFTA States and the Palestine Liberation Organization for the benefit of the Palestinian Authority *Signed 30 November 1998*	Article 39 (Entry into force) 1. This Agreement shall enter into force on 1 July 1999 in relation to those Signatories which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that the Palestinian Authority has deposited its instrument of ratification or acceptance. 2. In relation to a Signatory depositing its instrument of ratification or acceptance after 1 July 1999, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to the Palestinian Authority this Agreement enters into force at the latest on the same date. **3. Any Signatory may already at the time of signature declare that, during an initial phase, it shall apply this Agreement provisionally if this Agreement cannot enter into force in relation to that Signatory by 1 July 1999. For an EFTA State provisional application is only possible provided that in relation to the Palestinian Authority this Agreement has entered into force, or that the Palestinian Authority is applying this Agreement provisionally.**
Free Trade Agreement between the EFTA States and the former Yugoslav Republic of Macedonia *Signed 19 June 2000*	Article 40 (Entry into force) 1. This Agreement shall enter into force on 1 January 2001 in relation to those Signatories which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Macedonia has deposited its instrument of ratification or acceptance. 2. In relation to a Signatory depositing its instrument of ratification or acceptance after 1 January 2001, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Macedonia this Agreement enters into force at the latest on the same date. **3. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 January 2001, provided that in relation to Macedonia this Agreement has entered into force or is provisionally applied at the latest as of the same date. Provisional application of this Agreement shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Mexico *Signed 27 November 2000*	Article 84 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

	2. This Agreement shall enter into force on 1 July 2001 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Mexico is among the States that have deposited their instruments of ratification or acceptance. 3. In relation to a Signatory State depositing its instrument of ratification or acceptance after 1 July 2001, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Mexico this Agreement enters into force at the latest on the same date. **4. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 July 2001. Provisional application of this Agreement shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Jordan *Signed 21 June 2001*	Article 40 (Entry into force) 1. This Agreement shall enter into force on 1 January 2002 in relation to those Signatories which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Jordan has deposited its instrument of ratification or acceptance. 2. In relation to a Signatory depositing its instrument of ratification or acceptance after 1 January 2002, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Jordan this Agreement enters into force at the latest on the same date. **3. Any Signatory may already at the time of signature declare that, during an initial phase, it shall apply this Agreement provisionally, if this Agreement cannot enter into force in relation to that Signatory by 1 January 2002. For an EFTA State provisional application is only possible provided that in relation to Jordan this Agreement has entered into force, or that Jordan is applying this Agreement provisionally.**
Free Trade Agreement between the EFTA States and Singapore *Signed 26 June 2002*	Article 72 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 January 2003 in relation to those Signatory States which by then have deposited their instruments of ratification, acceptance or approval with the Depositary, and provided that Singapore is among the States that have deposited their instruments of ratification, acceptance or approval. 3. In relation to a Signatory State depositing its instrument of ratification, acceptance or approval after 1 January 2003, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to the Republic of Singapore this Agreement enters into force at the latest on the same date. **4. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 January 2003. Provisional application of this Agreement shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Chile *Signed 26 June 2003*	Article 106 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 February 2004 in relation to those Signatory States which by then have ratified, accepted or approved the Agreement, provided they have deposited their instruments of ratification, acceptance or approval with the Depositary at least 30 days before the date of entry into force, and provided that Chile is among the States that have deposited their instruments of ratification, acceptance or approval.

	3. In case this Agreement does not enter into force on 1 February 2004, it shall enter into force on the first day of the first month following the latter deposit of the instruments of ratification, acceptance or approval by Chile and at least one EFTA State. 4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument. **5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Lebanon *Signed 24 June 2004*	Article 41 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 January 2005 in relation to those Signatory States which by then have ratified the Agreement, provided they have deposited their instruments of ratification or acceptance with the Depositary at least two months before the entry into force, and provided that Lebanon is among the States that have deposited their instruments of ratification or acceptance. 3. In case this Agreement does not enter into force on 1 January 2005 it shall enter into force on the first day of the third month following the latter date on which Lebanon and at least one EFTA State have deposited their instruments of ratification. 4. In relation to an EFTA State depositing its instrument of ratification, after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument. **5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Tunisia *Signed 17 December 2004*	Article 45 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 June 2005 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Tunisia is among the States that have deposited their instruments of ratification or acceptance. 3. In case this Agreement does not enter into force on 1 June 2005 it shall enter into force on the first day of the second month following the latter date on which Tunisia and at least one EFTA State have deposited their instruments of ratification. 4. In relation to an EFTA State depositing its instrument of ratification, after this Agreement has entered into force, the Agreement shall enter into force on the first day of the second month following the deposit of its instrument. **5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and the Republic of Korea *Signed 15 December 2005*	Article 10.6 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 July 2006 in relation to those Signatory States which by then have ratified this Agreement, provided they have deposited their instruments of

	ratification, acceptance or approval with the Depositary at least one month before the entry into force, and provided that Korea is among the States that have deposited their instruments. 3. In case this Agreement does not enter into force on 1 July 2006, it shall enter into force on the first day of the second month following the latter date on which Korea and at least one EFTA State have deposited their instruments of ratification, acceptance, or approval with the Depositary. 4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the second month following the deposit of its instrument. **5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and the Southern African Customs Union States *Signed 26 June 2006*	Article 43 (Entry into Force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. **2. If its constitutional requirements permit, any EFTA State or SACU State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.** 3. This Agreement shall enter into force on 1 July 2006, provided all the Parties have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to, the Depositary at least one month before this date. 4. In case this Agreement does not enter into force on 1 July 2006 it shall enter into force on the first day of the second month following the date on which the last Party has deposited its instrument or notified provisional application.
Free Trade Agreement between the Arab Republic of Egypt and the EFTA States *Signed 27 January 2007*	Article 49 (Entry into force) 1. This Agreement shall enter into force in relation to those Signatory States which have ratified the Agreement on the first day of the second month following the exchange of their instruments of ratification or acceptance, provided that Egypt is among the States that have deposited their instruments of ratification or acceptance. **2. A Signatory State may, if constitutional requirements allow, apply this Agreement provisionally during an initial phase, provided that Egypt has ratified the Agreement. Provisional application of the Agreement shall be notified to the other Signatory States.**
Free Trade Agreement between Canada and the EFTA States *Signed 26 January 2008*	**Article 41 (Provisional application)** **If their domestic requirements permit, Canada and any EFTA State may apply this Agreement and the bilateral Agreements on trade in agricultural products provisionally. Such provisional application shall commence as of the date of the entry into force of this Agreement between Canada and at least two EFTA States, in accordance with paragraph 2 of Article 42. Provisional application of such Agreements under this Article shall be notified to the Depositary.** Article 42 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on the first day of the third month following the deposit by Canada and at least two of the EFTA States of their respective instruments of ratification, acceptance or approval with the Depositary, provided that the same Parties have exchanged their instruments of ratification, acceptance or approval in respect of the bilateral Agreement on trade in agricultural products concerned.

	3. This Agreement shall enter into force for the other EFTA States at the date of the deposit of their respective instruments of ratification, acceptance or approval with the Depositary, provided Canada and the EFTA States concerned have exchanged instruments of ratification, acceptance or approval in respect of the corresponding bilateral Agreements on trade in agricultural products. 4. Should Canada and Liechtenstein apply this Agreement provisionally between them, this Agreement shall enter into force on the same date as for Switzerland, following Liechtenstein's deposit of its instrument of ratification, acceptance or approval with the Depositary.
Free Trade Agreement between the EFTA States and the Gulf Cooperation Council member States *Signed 22 June 2009*	Article 9.9 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. **2. If its constitutional requirements permit, any Party may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.** 3. This Agreement shall not enter into force or be applied provisionally between an EFTA State and GCC unless the complementary agreement on trade in basic agricultural goods between the EFTA State and GCC enters into force or is applied provisionally simultaneously. 4. This Agreement shall enter into force on the first day of the third month after the GCC Member States and at least one EFTA State have deposited their respective instruments of ratification, acceptance or approval with the Depositary. 5. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force this Agreement shall enter into force on the first day of the third month following the deposit of its instrument with the Depositary.
Free Trade Agreement between Albania and the EFTA States *Signed 17 December 2009*	Article 42 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 April 2010 in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, at least two months before that date, and provided that Albania is among those Parties. 3. In case this Agreement does not enter into force on 1 April 2010 it shall enter into force on the first day of the third month after Albania and at least one EFTA State have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary. 4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval. **5. If its constitutional requirements permit, Albania or any EFTA State may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.** 6. This Agreement shall not enter into force or be applied provisionally between Albania and an EFTA State unless the complementary agreement on trade in agricultural products between Albania and that EFTA State enters into force or is applied provisionally simultaneously. It shall remain in force between Albania and that EFTA State as long as the complementary agreement remains in force between them.

Free Trade Agreement between the EFTA States and Serbia *Signed 17 December 2009*	Article 54 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 April 2010 in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, at least two months before that date, and provided that Serbia is among those Parties. 3. In case this Agreement does not enter into force on 1 April 2010 it shall enter into force on the first day of the third month after at least one EFTA State and Serbia have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary. 4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval. **5. If its constitutional requirements permit, any EFTA State or Serbia may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.**
	6. This Agreement shall not enter into force or be applied provisionally between an EFTA State and Serbia unless the complementary agreement on trade in agricultural products between that EFTA State and Serbia enters into force or is applied provisionally simultaneously. It shall remain in force between that EFTA State and Serbia as long as the complementary agreement remains in force between them.
Free Trade Agreement between the EFTA States and Peru *Signed 24 June 2010 (EFTA States)* *Signed 14 July 2010 (Peru)*	Article 13.2 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal and constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 June 2011, provided that Peru and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to the Depositary, at least two months prior to that date. 3. In case the Agreement does not enter into force on 1 June 2011, it shall enter into force on the first day of the third month following the latter date on which Peru and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to the Depositary. 4. If an EFTA State deposits its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument. **5. Where Peru has ratified this Agreement, an EFTA State may, if its legal and constitutional requirements so permit, apply this Agreement provisionally pending ratification, acceptance or approval by that State. Provisional application of this Agreement shall be notified to the Depositary, and shall apply from the first day of the third month following the notification.** **6. If the Agreement is not ratified, accepted or approved by a Party, and it had been provisionally applied by that Party, paragraph 1 of Article 13.5 (Withdrawal) shall apply mutatis mutandis. Provisional application shall continue for a period of six months following the date of the receipt of the Party's notification by the Depositary regarding the non-ratification, non-acceptance or non-approval of the Agreement.** Article 13.5 (Withdrawal)

	1. Any Party may withdraw from this Agreement after it provides written notification to the other Parties. Such withdrawal shall be effective six months after the date on which the notification is received by the Depositary, except otherwise agreed by the Parties. 2. If Peru withdraws, this Agreement shall expire when the withdrawal becomes effective. 3. In case any EFTA State withdraws from the Convention establishing the European Free Trade Association, it shall withdraw at the same time from this Agreement in accordance with paragraph 1.
Free Trade Agreement between the EFTA States and Montenegro *Signed 14 November 2011*	Article 51 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on 1 July 2012 in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, at least two months before that date, and provided that at least one EFTA State and Montenegro are among them. 3. In case this Agreement does not enter into force on 1 July 2012, it shall enter into force on the first day of the third month after at least one EFTA State and Montenegro have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary. 4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval. **5. If its constitutional requirements permit, a Party may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Bosnia and Herzegovina *Signed 24 June 2013*	Article 53 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force, in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, on the first day of the third month following the receipt of the latest deposit of instrument of ratification, acceptance or approval, or notification on provisional application, provided that at least one EFTA State and Bosnia and Herzegovina are among them. 3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval. **4. If its constitutional requirements permit, any EFTA State or Bosnia and Herzegovina may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and the Central American States *Signed 24 June 2013*	Article 13.6 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective domestic legal procedures of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. **2. If its respective legal requirements permit, a Party may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.**

	3. This Agreement shall enter into force 60 days after the date on which at least one Central American State and at least one EFTA State have deposited their instrument of ratification, acceptance or approval with the Depositary. 4. In relation to a Party depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force 60 days following the deposit of its instrument.
Free Trade Agreement between the EFTA States and the Philippines *Signed 28 April 2016.*	Article 14.5 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and the Philippines have deposited their instrument of ratification, acceptance or approval with the Depositary. 3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument. **4. If its respective legal requirements permit, a Party may apply this Agreement provisionally, pending its entry into force for that Party. Provisional application of this Agreement shall be notified to the Depositary.**
Free Trade Agreement between the EFTA States and Georgia *Signed 27 June 2016.*	Article 13.5 (Entry into force) 1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary. 2. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and Georgia have deposited their instrument of ratification, acceptance or approval with the Depositary. 3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument. **4. If its respective legal requirements permit, a Party may apply this Agreement provisionally, pending its entry into force for that Party. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.**